



[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 590

FE Docket Nos.

Sabine Pass Liquefaction, LLC	[FE Docket No. 10-111-LNG]
Carib Energy (USA), LLC	[FE Docket No. 11-141-LNG]
Freeport LNG Expansion, L.P. et al.	[FE Docket No. 10-161-LNG]
Lake Charles Exports, LLC	[FE Docket No. 11-59-LNG]
Dominion Cove Point LNG, LP	[FE Docket No. 11-128-LNG]
Freeport LNG Expansion, L.P. et al.	[FE Docket No. 11-161-LNG]
Cameron LNG, LLC	[FE Docket No. 11-162-LNG]
Southern LNG Company, LLC	[FE Docket No. 12-100-LNG]
Gulf LNG Liquefaction Company, LLC	[FE Docket No. 12-101-LNG]
Jordan Cove Energy Project, L.P.	[FE Docket No. 12-32-LNG]
CE FLNG, LLC	[FE Docket No. 12-123-LNG]
Golden Pass Products, LLC	[FE Docket No. 12-156-LNG]
Lake Charles LNG Export Co.	[FE Docket No. 13-04-LNG]
MPEH LLC	[FE Docket No. 13-26-LNG]
Cheniere Marketing LLC and Corpus Christi Liquefaction, LLC	[FE Docket Nos. 13-30-LNG, 13-42 LNG, & 13-121-LNG]
Venture Global Calcasieu Pass	[FE Docket Nos. 13-69-LNG, 14-88-LNG, & 15-25 LNG]
Eos LNG LLC	[FE Docket No. 13-116-LNG]
Barca LNG LLC	[FE Docket No. 13-118-LNG]
Magnolia LNG, LLC	[FE Docket No. 13-132-LNG]
Delfin LNG, LLC	[FE Docket No. 13-147-LNG]
Emera CNG, LLC	[FE Docket No. 13-157-CNG]
SCT&E LNG, LLC	[FE Docket No. 14-98-LNG]
Pieridae Energy (USA) Ltd.	[FE Docket No. 14-179-LNG]
American LNG Marketing, LLC	[FE Docket No. 14-209-LNG]
Bear Head LNG Corporation and Bear Head LNG (USA)	[FE Docket No. 15-33-LNG]
Floridian Natural Gas Storage Co., LLC	[FE Docket No. 15-38-LNG]
G2 LNG LLC	[FE Docket No. 15-45-LNG]
Texas LNG Brownsville LLC	[FE Docket No. 15-62-LNG]
Sabine Pass Liquefaction, LLC	[FE Docket No. 15-63-LNG]
Strom Inc.	[FE Docket No. 15-78-LNG]
Cameron LNG, LLC	[FE Docket No. 15-90-LNG]
Port Arthur LNG, LLC	[FE Docket No. 15-96-LNG]
Cameron LNG, LLC	[FE Docket No. 15-167-LNG]
Rio Grande LNG, LLC	[FE Docket No. 15-190-LNG]
Air Flow North American Corp.	[FE Docket No. 15-206-LNG]
Eagle LNG Partners Jacksonville, LLC	[FE Docket No. 16-15-LNG]

SeaOne Gulfport, LLC	[FE Docket No. 16-22-CGL]
Venture Global Plaquemines LNG, LLC	[FE Docket No. 16-28-LNG]
Carib Energy (USA) LLC,	[FE Docket No. 16-98-LNG]
Freeport LNG Expansion, L.P., et al.	[FE Docket No. 16-108-LNG]
Lake Charles LNG Export Co.	[FE Docket No. 16-109-LNG]
Lake Charles Exports, LLC	[FE Docket No. 16-110-LNG]
Driftwood LNG LLC	[FE Docket No. 16-144-LNG]
Eagle LNG Partners Jacksonville II, LLC	[FE Docket No. 17-79-LNG]
Fourchon LNG, LLC	[FE Docket No. 17-105-LNG]
Galveston Bay LNG, LLC	[FE Docket No. 17-167-LNG]
Freeport LNG Expansion, L.P., et al.	[FE Docket No. 18-26-LNG]
Corpus Christi Liquefaction Stage III, LLC	[FE Docket No. 18-78-LNG]
Mexico Pacific Limited LLC	[FE Docket No. 18-70-LNG]
Energía Liquefaction, S. de R.L. de C.V.	[FE Docket No. 18-144-LNG]
Energía Costa Azul, S. de R.L. de C.V.	[FE Docket No. 18-145-LNG]
Annova LNG Common Infrastructure, LLC	[FE Docket No. 19-34-LNG]
Cheniere Marketing LLC and Corpus Christi Liquefaction, LLC	[FE Docket No. 19-124-LNG]
Sabine Pass Liquefaction, LLC	[FE Docket No. 19-125-LNG]
Commonwealth LNG, LLC	[FE Docket No. 19-134-LNG]

Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of proposed policy statement and request for comments.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of a proposed policy statement (Proposed Policy Statement or Proposal). DOE is proposing to extend the standard 20-year term for authorizations to export natural gas from the lower-48 states—including domestically produced liquefied natural gas (LNG), compressed natural gas, and compressed gas liquid—to countries with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries). Under the Proposal, existing non-FTA authorization holders could apply to extend their export term through December 31, 2050, on a voluntary opt-in basis; existing applicants could amend their pending non-FTA application to request an export term through December 31, 2050, on a voluntary opt-

in basis; and DOE would issue all future non-FTA export authorizations with a standard export term lasting through December 31, 2050, unless a shorter term is requested by the applicant. In this document, DOE discusses the Proposed Policy Statement and invites comments on the Proposal. DOE is proposing this policy change under section 3(a) of the Natural Gas Act (NGA) and DOE's implementing regulations.

DATES: Comments are to be filed using procedures detailed in the **Public Comment Procedures** section no later than 4:30 p.m., Eastern time, **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES:

Electronic Filing of Comments Using Online Form:

<https://fossil.energy.gov/app/docketindex/docket/index/22>

Regular Mail

U.S. Department of Energy (FE-34)
Attn: Term Extension - Proposed Policy Statement
Office of Regulation, Analysis, and Engagement
Office of Fossil Energy
P.O. Box 44375
Washington, DC 20026-4375

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE-34)
Attn: Term Extension - Proposed Policy Statement
Office of Regulation, Analysis, and Engagement
Office of Fossil Energy
Forrestal Building, Room 3E-042
1000 Independence Avenue, SW
Washington, DC 20585

FOR FURTHER INFORMATION CONTACT: Amy Sweeney, U.S. Department of Energy

(FE-34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue, SW, Washington, DC 20585;

(202) 586-2627; amy.sweeney@hq.doe.gov; Cassandra Bernstein or Kari Twaite, U.S. Department of Energy (GC-76), Office of the Assistant General Counsel for Electricity and

Fossil Energy, Forrestal Building, Room 6D-033, 1000 Independence Ave. SW, Washington, DC 20585; (202) 586-9793 or (202) 586-6978; *cassandra.bernstein@hq.doe.gov* or *kari.twaite@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. Acronyms and abbreviations used in this document are set forth below for reference.

Bcf/d	Billion Cubic Feet per Day
Bcf/yr	Billion Cubic Feet per Year
CGL	Compressed Gas Liquid
CNG	Compressed Natural Gas
DOE	U.S. Department of Energy
EIA	U.S. Energy Information Administration
FE	Office of Fossil Energy, U.S. Department of Energy
FTA	Free Trade Agreement
GHG	Greenhouse Gas
GWP	Global Warming Potential
LCA	Life Cycle Analysis
LNG	Liquefied Natural Gas
NETL	National Energy Technology Laboratory
NEPA	National Environmental Policy Act of 1969
NGA	Natural Gas Act of 1938

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I. Background

A. DOE Export Authorizations Under Section 3 of the Natural Gas Act

DOE is responsible for authorizing exports of domestically produced natural gas to foreign countries under section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717b.¹ In relevant part, section 3(c) of the NGA applies to applications for exports of natural gas, including LNG,² to

¹ The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-002.04G issued on June 4, 2019.

² In referring to natural gas in this Proposal, DOE refers primarily, but not exclusively, to LNG. To date, two non-FTA proceedings have involved other types of natural gas: compressed natural gas (CNG) in FE Docket No. 13-157-CNG, and compressed gas liquid (CGL) in FE Docket No. 16-22-CGL. *See* 15 U.S.C. 717a(5) (definition of natural gas); 10 CFR 590.102(i) (same).

countries with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries).³ Section 3(c) was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that FTA applications “shall be deemed to be consistent with the public interest” and granted “without modification or delay.”⁴ Accordingly, this Proposed Policy Statement does not apply to existing or future FTA applications and authorizations. As discussed in Section II.A.5, however, DOE anticipates that, if this Proposal is adopted, FTA authorization holders likely will request a comparable extension in the export term of their existing FTA orders.

For applications to export natural gas to non-FTA countries, section 3(a) of the NGA sets forth the following standard of review:

[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy⁵] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary’s] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.⁶

DOE, as affirmed by the D.C. Circuit, has consistently interpreted NGA section 3(a) as creating a rebuttable presumption that a proposed export of natural gas is in the public interest.⁷

³ 15 U.S.C. 717b(c). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

⁴ 15 U.S.C. 717b(c).

⁵ The Secretary’s authority was established by the Department of Energy Organization Act, 42 U.S.C. 7172, which transferred jurisdiction over imports and export authorizations from the Federal Power Commission to the Secretary of Energy.

⁶ 15 U.S.C. 717b(a) (emphasis added).

⁷ See *Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017) (“We have construed [NGA section 3(a)] as containing a ‘general presumption favoring [export] authorization.’”) (quoting *W. Va. Pub. Serv. Comm’n v. U.S. Dep’t of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982)).

Accordingly, DOE will conduct an informal adjudication and grant a non-FTA application unless DOE finds that the proposed exportation will not be consistent with the public interest.⁸

Before reaching a final decision, DOE must also comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* DOE’s environmental review process under NEPA may result in the preparation or adoption of an environmental impact statement (EIS) or environmental assessment (EA) describing the potential environmental impacts associated with the application.⁹ In other cases, DOE may determine that an application is eligible for a categorical exclusion from the preparation or adoption of an EIS or EA, pursuant to DOE’s regulations implementing NEPA.

B. Regulatory Background

1. Public Interest Review for Non-FTA Export Authorizations

Although NGA section 3(a) establishes a broad public interest standard and a presumption favoring export authorizations, the statute does not define “public interest” or identify criteria that must be considered. In prior decisions, DOE has identified a range of factors that it evaluates when reviewing an application to export LNG to non-FTA countries. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others. To conduct this review, DOE looks to record evidence developed in the application proceeding.

⁸ *See id.* (“there must be ‘an affirmative showing of inconsistency with the public interest’ to deny the application” under NGA section 3(a)) (quoting *Panhandle Producers & Royalty Owners Ass’n v. Econ. Regulatory Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)). As of August 24, 2018, qualifying small-scale exports of natural gas to non-FTA countries are deemed to be consistent with the public interest under NGA section 3(a). *See* 10 CFR 590.102(p); 10 CFR 590.208(a); *see also* U.S. Dep’t of Energy, Small-Scale Natural Gas Exports; Final Rule, 83 FR 35106 (July 25, 2018).

⁹ Typically, the Federal agency responsible for permitting the export facility—either the Federal Energy Regulatory Commission or the U.S. Department of Transportation (DOT) Maritime Administration (MARAD)—serves as the lead agency in the NEPA review process, and DOE serves as a cooperating agency. Where no other Federal agency is responsible for permitting the export facility, DOE serves as the lead agency in the NEPA review process.

DOE's prior decisions have also looked to certain principles established in its 1984 Policy Guidelines.¹⁰ The goals of the 1984 Policy Guidelines are to minimize Federal control and involvement in energy markets and to promote a balanced and mixed energy resource system. Specifically, the 1984 Policy Guidelines state that "[t]he market, not government, should determine the price and other contract terms of imported [or exported] gas," and that DOE's "primary responsibility in authorizing imports [or exports] should be to evaluate the need for the [natural] gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market."¹¹ Although the Policy Guidelines are nominally applicable to natural gas import cases, DOE held in DOE/FE Order No. 1473 that the 1984 Policy Guidelines should be applied to natural gas export applications.¹²

In Order No. 1473, DOE stated that it was guided by DOE Delegation Order No. 0204-111. That delegation order directed the regulation of exports of natural gas "based on a consideration of the domestic need for the gas to be exported and such other matters as the Administrator [of the Economic Regulatory Administration] finds in the circumstances of a particular case to be appropriate."¹³

¹⁰ New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 FR 6684 (Feb. 22, 1984) [hereinafter 1984 Policy Guidelines].

¹¹ *Id.* at 49 FR 6685.

¹² *Phillips Alaska Natural Gas Corp., et al.*, DOE/FE Order No. 1473, FE Docket No. 96-99-LNG, Order Extending Authorization to Export Liquefied Natural Gas from Alaska (Apr. 2, 1999), at 14 (citing *Yukon Pacific Corp.*, DOE/FE Order No. 350, Order Granting Authorization to Export Liquefied Natural Gas from Alaska, 1 FE ¶ 70,259, 71,128 (1989)).

¹³ DOE Delegation Order No. 0204-111 (Feb. 22, 1984), at 1 (¶ (b)); *see also* 1984 Policy Guidelines, 49 FR 6690 (incorporating DOE Delegation Order No. 0204-111). In February 1989, the Assistant Secretary for Fossil Energy assumed the delegated responsibilities of the Administrator of the Economic Regulatory Administration. *See Applications for Authorization to Construct, Operate, or Modify Facilities Used for the Export or Import of Natural Gas*, 62 FR 30435, 30437 n.15 (June 4, 1997) (citing DOE Delegation Order No. 0204-127, 54 FR 11436 (Mar. 20, 1989)).

Although DOE Delegation Order No. 0204-111 is no longer in effect,¹⁴ DOE's review of export applications has continued to focus on: (i) the domestic need for the natural gas proposed to be exported, (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies, (iii) whether the arrangement is consistent with DOE's policy of promoting market competition, and (iv) any other factors bearing on the public interest described herein.

2. DOE's Economic Studies Through 2017

Between 2011 and 2017, DOE commissioned four studies to examine the effects of U.S. LNG exports on the U.S. economy and energy markets.¹⁵ The first study, *Effect of Increased Natural Gas Exports on Domestic Energy Markets*, was performed by the U.S. Energy Information Administration (EIA) and published in January 2012 (EIA Study).¹⁶ The second study, *Macroeconomic Impacts of LNG Exports from the United States*, was performed by NERA Economic Consulting (NERA) and published in December 2012 (NERA Study and, together with the EIA Study, the 2012 LNG Export Study).¹⁷ The third study, *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets*, was performed by EIA and published in October 2014 (2014 LNG Export Study).¹⁸ The fourth study, *The Macroeconomic Impact of Increasing U.S. LNG Exports*, was performed jointly by the Center for Energy Studies at Rice University's Baker Institute and Oxford Economics and published in

¹⁴ DOE Delegation Order No. 0204-111 was later rescinded by DOE Delegation Order No. 00-002.00 (¶ 2) (Dec. 6, 2001), and DOE Redelegation Order No. 00-002.04 (¶ 2) (Jan. 8, 2002).

¹⁵ Because there is no natural gas pipeline interconnection between Alaska and the lower 48 states, DOE generally views those LNG export markets as distinct.

¹⁶ See 2012 LNG Export Study, 77 FR 73627 (Dec. 11, 2012), available at: http://energy.gov/sites/prod/files/2013/04/f0/fr_notice_two_part_study.pdf (notice of availability of the 2012 LNG Export Study).

¹⁷ See *id.*

¹⁸ U.S. Energy Info. Admin., *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets* (Oct. 2014), available at: <https://www.eia.gov/analysis/requests/fe/pdf/lng.pdf>.

October 2015 (2015 LNG Export Study).¹⁹ As relevant here, the 2015 LNG Export Study included a case examining export volumes up to 28 Bcf/d of natural gas, and the analysis covered through the year 2040.

DOE relied on these studies, and the public comments received on each study, to better inform its public interest review under NGA section 3(a).²⁰

3. DOE's Environmental Studies

On June 4, 2014, DOE issued two notices in the *Federal Register* proposing to evaluate different environmental aspects of the LNG production and export chain. First, DOE announced that it had conducted a review of existing literature on potential environmental issues associated with unconventional natural gas production in the lower-48 states. The purpose of this review was to provide additional information to the public concerning the potential environmental impacts of unconventional natural gas exploration and production activities, including hydraulic fracturing. DOE published its draft report for public review and comment, entitled *Draft Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States* (Draft Addendum).²¹ DOE received public comments on the Draft Addendum,

¹⁹ Center for Energy Studies at Rice University Baker Institute and Oxford Economics, *The Macroeconomic Impact of Increasing U.S. LNG Exports* (Oct. 29, 2015), available at: http://energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf; see also U.S. Dep't of Energy, Macroeconomic Impacts of LNG Exports Studies; Notice of Availability and Request for Comments, 80 FR 81300 (Dec. 29, 2015) (notice of availability of the 2014 and 2015 LNG Export Studies).

²⁰ For more information about the 2012, 2014, and 2015 LNG Export Studies, see U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports; Response to Comments Received on Study, 83 FR 67251 (Dec. 28, 2018) [hereinafter 2018 Study Response to Comments].

²¹ Dep't of Energy, Draft Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States, 79 FR 32258 (June 4, 2014). DOE announced the availability of the Draft Addendum on its website on May 29, 2014.

and on August 15, 2014, issued the final Addendum with its response to the public comments contained in Appendix B.²²

Second, DOE commissioned the National Energy Technology Laboratory (NETL), a DOE applied research laboratory, to conduct an analysis calculating the life cycle greenhouse gas (GHG) emissions for LNG exported from the United States. The purpose of this analysis was to determine: (i) how domestically-produced LNG exported from the United States compares with regional coal (or other LNG sources) for electric power generation in Europe and Asia from a life cycle GHG perspective, and (ii) how those results compare with natural gas sourced from Russia and delivered to the same markets via pipeline. DOE published the report entitled, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States* (LCA GHG Report).²³ DOE also received public comments on the LCA GHG Report and responded to those comments in prior orders.²⁴

DOE has made the Addendum and the LCA GHG Report, as well as the public comments received on each study, part of the record of each non-FTA proceeding since 2014.

4. DOE's Standard 20-Year Export Term for Non-FTA Authorizations

Both the NGA and DOE's regulations provide DOE with broad authority to attach conditions to non-FTA export authorizations. NGA section 3(a) states that DOE may grant an application for a non-FTA export authorization "upon such terms and conditions as the [Secretary] may find

²² Dep't of Energy, Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States, 79 FR 48132 (Aug. 15, 2014) [hereinafter Addendum]; see also <http://energy.gov/fe/addendum-environmental-review-documents-concerning-exports-natural-gas-united-states>.

²³ Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States, 79 FR 32260 (June 4, 2014) [hereinafter LCA GHG Report]. DOE announced the availability of the LCA GHG Report on its website on May 29, 2014.

²⁴ See, e.g., *Magnolia LNG, LLC*, DOE/FE Order No. 3909, FE Docket No. 13-132-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Proposed Magnolia LNG Terminal to be Constructed in Lake Charles, Louisiana, to Non-Free Trade Agreement Nations, at 95-121 (Nov. 30, 2016) (description of LCA GHG Report and response to comments).

necessary or appropriate.”²⁵ Similarly, under 10 CFR 590.404, DOE may “issue a final opinion and order and attach such conditions thereto as may be required by the public interest after completion and review of the final record.”²⁶ However, neither NGA section 3(a) nor DOE’s regulations prescribe a specific time period for a non-FTA authorization. For this reason, DOE has determined that it has discretion under 10 CFR 590.404 to impose a suitable term for non-FTA authorizations as appropriate, in light of the evidence in each proceeding.

In 2011, DOE issued its first conditional long-term export authorization involving domestically produced LNG from the lower-48 states to Sabine Pass Liquefaction, LLC (Sabine Pass) in DOE/FE Order No. 2961.²⁷ In its application, Sabine Pass had requested an export term of 20 years. After reviewing the record evidence, DOE determined that a term of 20 years was consistent with the public interest, and DOE granted the conditional order for the requested 20-year term.²⁸

In 2013, DOE continued to issue long-term non-FTA authorizations for a standard 20-year term. DOE chose a 20-year term for two reasons. First, the economic analysis then-supporting DOE’s authorizations—the 2012 LNG Export Study—did not extend past 20 years at the time the authorizations were issued. In DOE/FE Order No. 3282, for example, Freeport LNG Expansion, L.P., *et al.* (Freeport) had requested a 25-year export term for its non-FTA authorization. DOE declined to authorize a 25-year export term, and instead approved a 20-year term. DOE reasoned that, “because the NERA study contains projections over a 20-year period

²⁵ 15 U.S.C. 717b(a).

²⁶ 10 CFR 590.404.

²⁷ See *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, FE Docket No. 10-111-LNG, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations, at 2, 20 n.26, 42 (May 20, 2011) (Ordering Para. B). DOE later granted Sabine Pass’s final order with a 20-year term (*see* DOE/FE Order No. 2961-A, issued on August 7, 2012).

²⁸ See *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, at 2.

beginning from the date of first export, ... caution recommends limiting this conditional authorization to no longer than a 20-year term beginning from the date of first export.”²⁹

Second, in the same *Freeport* order, DOE recognized that “LNG export facilities are capital intensive and that, to obtain financing for such projects, there must be a reasonable expectation that the authorization will continue for a term sufficient to support repayment.”³⁰ DOE found that a 20-year term “is likely sufficient to achieve this result.”³¹ For these reasons, DOE granted Freeport’s conditional non-FTA order—and, later, its final non-FTA order—for a 20-year term, instead of the requested 25-year term.³²

DOE has continued to apply a policy of authorizing a 20-year export term for every long-term non-FTA order issued to date.³³ For each final non-FTA order, the 20-year export term commences when the authorization holder begins commercial export of LNG from its facility.³⁴

C. Judicial Decisions Upholding DOE’s Non-FTA Authorizations

Beginning in 2015, Sierra Club petitioned the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit or the Court) for review of five long-term LNG export

²⁹ See, e.g., *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3282, FE Docket No. 10-161-LNG, Order Conditionally Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations, at 114 (May 17, 2013) (Para. A, Term of the Authorization).

³⁰ *Id.* at 114-15.

³¹ *Id.* at 115.

³² See *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3282-C, FE Docket No. 10-161-LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations, at 89 (Nov. 14, 2014) (Para. A, Term of the Authorization).

³³ The only exception involves a conditional authorization to export LNG to non-FTA countries from Alaska. DOE conditionally granted the applicant’s request for a 30-year export term, citing unique aspects of that Alaska-based project. DOE has not yet issued a final order in that proceeding. See *Alaska LNG Project, LLC*, DOE/FE Order No. 3643, FE Docket No. 14-96-LNG, Order Conditionally Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Alaska LNG Terminal in Nikiski, Alaska, to Non-Free Trade Agreement Nations, at 35 (May 28, 2015).

³⁴ DOE also allows: (i) a term for commercial export operations to commence—typically seven years—set from the date the order is issued; and (ii) a three-year “make-up period” following the end of the 20-year export term, during which the authorization holder may continue to export any “make-up volume” that it was unable to export during the 20-year export term. These provisions are not directly at issue in this Proposal.

authorizations issued by DOE under the standard of review described above. Sierra Club challenged DOE's approval of LNG exports to non-FTA countries from projects proposed or operated by the following authorization holders: Freeport; Dominion Energy Cove Point LNG, LP (formerly Dominion Cove Point LNG, LP); Sabine Pass Liquefaction, LLC; and Cheniere Marketing, LLC, *et al.* The D.C. Circuit subsequently denied four of the five petitions for review: one in a published decision issued on August 15, 2017 (*Sierra Club I*),³⁵ and three in a consolidated, unpublished opinion issued on November 1, 2017 (*Sierra Club II*).³⁶ Sierra Club subsequently withdrew its fifth and remaining petition for review.³⁷

In *Sierra Club I*, the D.C. Circuit concluded that DOE had complied with both NGA section 3(a) and NEPA in issuing the challenged non-FTA authorization. Freeport had applied to DOE for authorization to export LNG to non-FTA countries from the Freeport Terminal located on Quintana Island, Texas. DOE granted the application in 2014 in a volume equivalent to 0.4 Bcf/d of natural gas, finding that Freeport's proposed exports were in the public interest under NGA section 3(a). DOE also considered and disclosed the potential environmental impacts of its decision under NEPA. Sierra Club petitioned for review of the Freeport authorization, arguing that DOE fell short of its obligations under both the NGA and NEPA. The D.C. Circuit rejected Sierra Club's arguments in a unanimous decision, holding that, "Sierra Club has given us no reason to question the Department's judgment that the [Freeport] application is not inconsistent with the public interest."³⁸

³⁵ *Sierra Club vs. U.S. Dep't of Energy*, 867 F.3d 189 (D.C. Cir. 2017) (denying petition of review of the LNG export authorization issued to Freeport LNG Expansion, L.P., *et al.*).

³⁶ *Sierra Club v. U.S. Dep't of Energy*, Nos. 16-1186, 16-1252, 16-1253, 703 Fed. Appx. 1 (D.C. Cir. Nov. 1, 2017) (denying petitions of review of the LNG export authorization issued to Dominion Cove Point LNG, LP; Sabine Pass Liquefaction, LLC; and Cheniere Marketing, LLC, *et al.*, respectively).

³⁷ See *Sierra Club v. U.S. Dep't of Energy*, No. 16-1426, Per Curiam Order (D.C. Cir. Jan. 30, 2018) (granting Sierra Club's unopposed motion for voluntarily dismissal).

³⁸ *Sierra Club I*, 867 F.3d at 203.

In the consolidated opinion in *Sierra Club II* issued on November 1, 2017, the D.C. Circuit ruled that “[t]he court’s decision in [*Sierra Club I*] largely governs the resolution of the [three] instant cases.”³⁹ Upon its review of the remaining “narrow issues” in those cases, the Court again rejected Sierra Club’s arguments under the NGA and NEPA, and upheld DOE’s actions in issuing the non-FTA authorizations in those proceedings.⁴⁰

The D.C. Circuit’s decisions in *Sierra Club I and II* continue to guide DOE’s review of applications to export LNG to non-FTA countries.

D. Recent Regulatory Developments

1. 2018 LNG Export Study

In 2017, DOE commissioned NERA to conduct a new economic study, now referred to as the 2018 LNG Export Study.⁴¹ As with its prior economic studies, DOE commissioned the 2018 LNG Export Study to inform its determination of the public interest in pending and future non-FTA application proceedings. DOE published the 2018 LNG Export Study on its website on June 7, 2018,⁴² and concurrently provided notice of the availability of the Study.⁴³

Like DOE’s prior economic studies, the 2018 Study analyzed the outcomes of different LNG export levels on the U.S. natural gas markets and the U.S. economy as a whole. Additionally, for the first time in a DOE-commissioned macroeconomic study, the 2018 LNG Export Study assessed the likelihood of different levels of “unconstrained” LNG exports, defined as market-determined levels of exports. The Study examined the period from the year 2020 through 2050,

³⁹ *Sierra Club*, 703 Fed. Appx. 1 at *2.

⁴⁰ *Id.*

⁴¹ See U.S. Dep’t of Energy, Study on Macroeconomic Outcomes of LNG Exports; Notice of Availability of the 2018 LNG Export Study and Request for Comments, 83 FR 27314 (June 12, 2018) [hereinafter 2018 Study Notice].

⁴² See NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), available at: <https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf> [hereinafter 2018 LNG Export Study or 2018 Study].

⁴³ See 2018 Study Notice.

and was based, in part, on the projections in EIA's *Annual Energy Outlook 2017*⁴⁴ through 2050.⁴⁵

DOE received 19 comments on the 2018 LNG Export Study. DOE summarized and responded to these comments in the Response to Comments document, published on December 28, 2018.⁴⁶

Based upon the record, DOE determined that the 2018 Study provides substantial support for non-FTA applications within the export volumes considered by the 2018 Study—ranging from 0.1 to 52.8 Bcf/d of natural gas.⁴⁷ The principal conclusion of the 2018 LNG Export Study is that the United States will experience net economic benefits from the export of domestically produced LNG through the 30-year study period, *i.e.*, from 2020 through 2050.⁴⁸

Overall, DOE found that the 2018 LNG Export Study supports the proposition that exports of LNG from the lower-48 states, in volumes up to and including 52.8 Bcf/d of natural gas, will not be inconsistent with the public interest. DOE also stated that it would consider each application to export LNG as required under the NGA and NEPA based on the administrative record compiled in each individual proceeding.⁴⁹

2. 2019 Life Cycle Greenhouse Gas Update

In 2018, DOE commissioned NETL to conduct an update to the 2014 LCA GHG Report, entitled *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the*

⁴⁴ U.S. Energy Info. Admin., *Annual Energy Outlook 2017* (with projections to 2050) (Jan. 5, 2017), available at: [https://www.eia.gov/outlooks/aeo/pdf/0383\(2017\).pdf](https://www.eia.gov/outlooks/aeo/pdf/0383(2017).pdf).

⁴⁵ See 2018 Study Notice, 83 FR 27316.

⁴⁶ See 2018 Study Response to Comments, 83 FR 67260-67272.

⁴⁷ See *id.*

⁴⁸ See *id.* In its Response to Comments document, DOE also highlighted the key findings of the Study. See *id.* 83 FR 67273.

⁴⁹ See *id.*

United States: 2019 Update (LCA GHG Update).⁵⁰ As with the 2014 Report, the LCA GHG Update compared life cycle GHG emissions of exports of domestically produced LNG to Europe and Asia, compared with alternative fuel sources (such as regional coal and other imported natural gas) for electric power generation in the destination countries. Although core aspects of the analysis—such as the scenarios investigated—were the same as the 2014 Report, the 2019 LCA GHG Update contained the following three changes:

- Incorporated NETL’s most recent characterization of upstream natural gas production, set forth in NETL’s April 2019 report entitled, *Life Cycle Analysis of Natural Gas Extraction and Power Generation* (April 2019 LCA of Natural Gas Extraction and Power Generation);⁵¹
- Updated the unit processes for liquefaction, ocean transport, and regasification characterization using engineering-based models and publicly-available data informed and reviewed by existing LNG export facilities, where possible; and
- Updated the 100-year global warming potential (GWP) for methane (CH₄) to reflect the current Intergovernmental Panel on Climate Change’s Fifth Assessment Report.⁵²

In all other respects, the LCA GHG Update was unchanged from the 2014 Report.

On September 19, 2019, DOE published notice of availability (NOA) of the LCA GHG Update and a request for comments.⁵³ DOE received seven comments in response to the NOA. In a Response to Comments document that was effective on December 19, 2019, and published

⁵⁰ Nat’l Energy Technology Laboratory, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update* (DOE/NETL 2019/2041) (Sept. 12, 2019), available at: <https://www.energy.gov/sites/prod/files/2019/09/f66/2019%20NETL%20LCA-GHG%20Report.pdf>. Although the LCA GHG Update is dated September 12, 2019, DOE announced the availability of the LCA GHG Update on its website and in the *Federal Register* on September 19, 2019.

⁵¹ Nat’l Energy Technology Laboratory, *Life Cycle Analysis of Natural Gas Extraction and Power Generation* (DOE/NETL-2019/2039) (Apr. 19, 2019), available at: <https://www.netl.doe.gov/energy-analysis/details?id=3198>.

⁵² See U.S. Dep’t of Energy, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States; Notice of Availability of Report Entitled Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update and Request for Comments*, 84 FR 49278, 49279 (Sept. 19, 2019).

⁵³ See *id.*

in the *Federal Register* on January 2, 2020, DOE responded to the public comments and summarized its conclusions drawn from the LCA GHG Update.⁵⁴

As DOE explained, the analysis in the LCA GHG Update was based on the most current available science, methodology, and data from the U.S. natural gas system to assess the GHGs associated with exports of U.S. LNG. The Update demonstrated that the conclusions of the 2014 LCA GHG Report have not changed. Specifically, the Update concluded that the use of U.S. LNG exports for power production in European and Asian markets will not increase GHG emissions from a life cycle perspective, when compared to regional coal extraction and consumption for power production.⁵⁵

The LCA GHG Update estimated the life cycle GHG emissions of U.S. LNG exports to Europe and Asia, compared with certain other fuels used to produce electric power in those importing countries. While acknowledging uncertainty, the LCA GHG Update showed that, to the extent U.S. LNG exports are preferred over coal in LNG-importing nations, U.S. LNG exports are likely to reduce global GHG emissions on per unit of energy consumed basis for power production. Further, to the extent U.S. LNG exports are preferred over other forms of imported natural gas, they are likely to have only a small impact on global GHG emissions.⁵⁶

The conclusions of the LCA GHG Update, combined with the observation that many LNG-importing nations rely heavily on fossil fuels for electric generation, suggest that exports of U.S. LNG may decrease global GHG emissions, although there is substantial uncertainty on this

⁵⁴ See U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update – Response to Comments, 85 FR 72 (Jan. 2, 2020).

⁵⁵ See *id.* 85 FR 78, 85.

⁵⁶ See *id.* 85 FR 85.

point, as indicated above.⁵⁷ Further, based on the evidence, DOE saw no reason to conclude that U.S. LNG exports will increase global GHG emissions in a material or predictable way.⁵⁸

In sum, DOE found that the LCA GHG Update supports the proposition that exports of LNG from the lower-48 states will not be inconsistent with the public interest. DOE stated it will evaluate each pending and future non-FTA application as required under the NGA and NEPA, based on the administrative record compiled in each individual proceeding.⁵⁹

E. Existing Non-FTA Authorizations and Pending Applications

To date, DOE has issued 38 final long-term authorizations to export domestically produced (or U.S.) LNG or compressed natural gas to non-FTA countries.⁶⁰ The cumulative volume of approved non-FTA exports under these authorizations is 38.06 billion cubic feet per day (Bcf/d) of natural gas, or 13.9 trillion cubic feet per year.⁶¹ As noted above, each of these final non-FTA orders authorize an export term of 20 years.

Additionally, 18 long-term non-FTA applications requesting to export domestically produced LNG from the lower-48 states are currently pending before DOE. These applications represent a cumulative volume of 24.5 Bcf/d of natural gas, or 8.94 trillion cubic feet per year.⁶²

To date, DOE also has authorized exports to FTA countries in a volume of 56.24 Bcf/d of natural gas. The volumes authorized for export to FTA and non-FTA countries, however, are not additive to one another. Rather, each order grants authority to export the entire volume of a facility to FTA or non-FTA countries, respectively, to provide the authorization holder with

⁵⁷ See *id.* 85 FR 86.

⁵⁸ See *id.*

⁵⁹ See *id.*

⁶⁰ See *Venture Global Plaquemines LNG, LLC*, DOE/FE Order No. 4446, FE Docket No. 16-28-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 43 (Oct. 15, 2019).

⁶¹ See *id.*

⁶² U.S. Dep't of Energy, Summary of LNG Export Applications as of Jan. 8, 2020, *available at*: <https://www.energy.gov/fe/downloads/summary-lng-export-applications-lower-48-states>.

maximal flexibility in determining its export destinations.⁶³ According to EIA estimates, U.S. domestic dry natural gas production for the year 2019 averaged a rate of 92.03 Bcf/d, well in excess of current long-term FTA and non-FTA authorizations (in non-additive volumes of 56.24 Bcf/d and 38.06 Bcf/d, respectively).⁶⁴

Finally, DOE notes that the amount of U.S. LNG export capacity that is currently operating or under construction totals 15.54 Bcf/d of natural gas across eight large-scale export projects in the lower-48 states.⁶⁵

II. Proposed Policy Statement

A. Proposal To Extend Standard Term of Non-FTA Authorizations

1. Basis for Proposal and Effect on Export Volume

Recently, authorization holders have indicated that a 30-year export term would better match the operational life of their physical asset—the LNG export facility—allowing them more security in financing their facility and maximizing their ability to contract for exports. LNG export terminals are typically designed for a service life of 30 to 50 years.⁶⁶ Although DOE has limited its non-FTA export authorizations to a 20-year export term based on the projections in the 2012, 2014, and 2015 LNG Export Studies, that limitation is no longer required based on the

⁶³ See, e.g., *Venture Global Plaquemines LNG, LLC*, DOE/FE Order No. 4446, at 53 (Ordering Para. I) (as a condition of the order, “Plaquemines LNG may not treat the FTA and non-FTA export volumes as additive to one another.”)

⁶⁴ U.S. Energy Info. Admin., “Short-Term Energy Outlook” (Jan. 14, 2020), available at: <https://www.eia.gov/outlooks/steo/data/browser/#/?v=15&f=A&s=0&mctype=0&ctype=linechart> (Table 5a, U.S. Natural Gas Supply, Consumption, and Inventories, “Total Dry Gas Production”).

⁶⁵ U.S. Energy Info. Admin., *U.S. Liquefaction Capacity* (Jan. 30, 2020), available at: <https://www.eia.gov/naturalgas/U.S.liquefactioncapacity.xlsx> (total of 15.54 Bcf/d calculated by adding Column N in “Existing & Under Construction” worksheet).

⁶⁶ See, e.g., *Texas LNG Brownsville LLC*, Order Granting Authorization Under Section 3 of the Natural Gas Act, 169 FERC ¶ 61,130, at ¶ 6 (Nov. 22, 2019) (stating that the minimum expected operational life of the LNG terminal is 25-30 years); Federal Energy Regulatory Comm’n, *Gulf LNG Liquefaction Project Final Environmental Impact Statement*, Docket No. CP15-521-000, at 4-197 (Apr. 17, 2019), available at: <https://www.ferc.gov/industries/gas/enviro/eis/2019/04-17-19-FEIS/FEIS.pdf> (the expected physical operational service life of the LNG terminal is 50 years); International Gas Union, *2019 World LNG Report*, at 35 (Apr. 2, 2019) (discussing LNG facilities in operation for “35 years or longer”).

findings of the 2018 LNG Export Study that included analysis on an expanded time period.

Because the 2018 LNG Export Study considered unconstrained (or market-determined) levels of LNG exports and included analysis through the year 2050, the 2018 Study supports export terms lasting through December 31, 2050.⁶⁷

A proposed change in export terms through the year 2050 would not alter the maximum daily rate of export currently approved under each existing non-FTA authorization. The maximum daily rate of export, set in billion cubic feet per day (Bcf/d), is already based on each facility's maximum approved liquefaction production capacity as set by the agency approving the siting and construction of the facility—either the Federal Energy Regulatory Commission or the U.S. Maritime Administration (*see supra* note 9). But, by extending the period over which these exports would occur, a term extension would provide a mechanism for existing authorization holders to increase the total volume of LNG exports over the life of their authorization.

For the non-FTA applications currently pending before DOE (involving exports from the lower-48 states), the total requested export volume for each application also would increase if DOE ultimately were to grant each application for an export term lasting through the year 2050 (as opposed to the standard 20-year term).

In sum, the Proposed Policy Statement, if adopted, would not increase the approved *rate* of exports from a particular facility, but it would result in an increase in the total approved *volume* of exports from each participating facility due to the longer export term. DOE notes that the 2018 LNG Export Study and the recent EIA Annual Energy Outlooks assume a steady rate of exports between 2040 and 2050.

⁶⁷ *See supra* at § I.D.1.

2. Comments of Cheniere Energy, Inc. Requesting Term Extension

On July 27, 2018, Cheniere Energy, Inc. (Cheniere) filed comments in the 2018 LNG Export Study proceeding.⁶⁸ Cheniere is the parent company of three companies that currently export U.S. LNG under long-term authorizations: Sabine Pass Liquefaction, LLC; Cheniere Marketing, LLC; and Corpus Christi Liquefaction, LLC. As part of its comments, Cheniere asked DOE to: (i) begin issuing export authorizations with a term of 30 years based on the analysis provided in the 2018 LNG Export Study, and (ii) provide a procedure whereby authorization holders with existing 20-year authorizations (such as Cheniere’s subsidiaries) could request such a term extension.⁶⁹

In support of this request, Cheniere first noted that the 2018 LNG Export Study extends for 30 years and shows macroeconomic benefits to the United States over the entire period.⁷⁰ Second, Cheniere asserted that it has received interest from LNG buyers who are seeking contracts that extend beyond 20 years. Cheniere stated that this interest in U.S. LNG may be “inhibited” if the seller lacks export authority over the entire contract term.⁷¹ Cheniere further stated that, once LNG projects enter operation, the flexibility to extend contracts beyond the initial 20-year term will be even more important. Cheniere maintained that, for foreign buyers deciding between U.S. LNG and alternative long-term sources, a 30-year term may prove decisive.⁷²

⁶⁸ Cheniere Energy, Inc., Comments on the 2018 LNG Export Study (July 27, 2018), *available at*: <https://fossil.energy.gov/app/DocketIndex/docket/DownloadFile/567> [hereinafter Cheniere Comments].

⁶⁹ *Id.* at 5.

⁷⁰ *Id.* (citing 2018 LNG Export Study at Appendix F).

⁷¹ *Id.* at 5-6.

⁷² *Id.* at 6.

3. Canadian Export Term for LNG

On December 4, 2019, Canada granted its first 40-year LNG export license, which it issued to Chevron Canada Limited (Chevron) for a proposed LNG export facility called the Kitimat LNG project.⁷³ Under the terms of that license, Chevron is authorized to export LNG from Canada in a volume of 996.93 billion cubic feet per year (Bcf/yr) of natural gas for a term of 40 years beginning on the date of first export—with a period of 10 years to commence exports.⁷⁴ Canada’s regulatory agency, the Canada Energy Regulator,⁷⁵ approved the requested 40-year export term over an argument by a commenter that Canada’s existing natural gas forecasts supported an export term of only 25 years.⁷⁶ In rejecting this argument, the Canada Energy Regulator found that “the natural gas resource base in Canada, as well as North America overall, is large and can accommodate reasonably foreseeable Canadian demand, including the natural gas exports proposed in this Application, and a plausible potential increase in demand” over a 40-year export term.⁷⁷ This recent development underscores the importance of U.S. LNG export projects being able to offer the same or similar contract terms as their Canadian counterparts.

4. Summary of Proposal

Based on the 2018 LNG Export Study, the LCA GHG Update, and the current status of the U.S. LNG export market, DOE believes there is new evidence to support changing from the standard 20-year export term for non-FTA orders to an extended export term with an end date of

⁷³ See Canada Energy Regulator, Letter Decision, Application of Chevron Canada Limited for a 40-Year License to Export Natural Gas as Liquefied Natural Gas (LNG), at 6 & Exh. 1 (Dec. 4, 2019) [hereinafter Canada Energy Regulator Decision], available at: https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90466/94153/552726/3760154/3760155/3893823/C03430-1_CER_%E2%80%93_Letter_Decision_%E2%80%93_Chevron_Application_for_a_40-year_Licence_to_Export_LNG_-_A7A5Z5.pdf?nodeid=3891530&vernum=-2.

⁷⁴ See *id.* at 1 & Appendix I.

⁷⁵ On August 28, 2019, Canada’s National Energy Board became the Canada Energy Regulator. See *id.* at 1 n.1.

⁷⁶ See Canada Energy Regulator Decision at 3.

⁷⁷ *Id.* at 6.

December 31, 2050. This Proposed Policy Statement, if adopted, would effectively extend the export term for existing authorization holders from 20 to 30 (or more) years, depending on when they commenced (or will commence) export operations.

For example, Sabine Pass Liquefaction, LLC received DOE's first final long-term non-FTA authorization (DOE/FE Order No. 2961-A) on August 7, 2012, and began exporting LNG in February 2016.⁷⁸ In addition to Sabine Pass, seven other non-FTA authorization holders are exporting LNG to date (Dominion Energy Cove Point LNG, LP; Cheniere Marketing, LLC; Corpus Christi Liquefaction, LLC; Cameron LNG, LLC; Freeport LNG Expansion, L.P., *et al.*; American LNG Marketing LLC; and Southern LNG Company, LLC).⁷⁹ If this Proposal is adopted and these authorization holders elect to apply for an extended export term, they ultimately could have authority to export for more than 30 years in total. For example, if Sabine Pass were to obtain an extended export term for Order No. 2961-A through December 31, 2050, it ultimately would be authorized to export LNG for a total of 38 years, with an actual export period of up to 34 years, 10 months (if Sabine Pass exported continuously through the year 2050).

For the majority of existing authorization holders, however, this Proposal would result in a maximum 30-year export term (depending on whether and when the authorization holders begin exporting LNG). Likewise, the Proposal would provide up to a 30-year export term for future authorizations issued beginning in 2020.

⁷⁸ See *supra* at § I.B.4.

⁷⁹ See U.S. Dep't of Energy, Office of Fossil Energy, *LNG Monthly* (Dec. 2019), at 9-25 (Tables 2a(i)-2a(vi), 2b), available at: https://www.energy.gov/sites/prod/files/2019/12/f69/LNG%20Monthly%202019_0.pdf (identifying exporters of U.S. LNG). DOE notes that Southern LNG Company, LLC began exporting LNG in December 2019, but those exports are not yet reflected in DOE's *LNG Monthly* report.

Under this Proposal, the December 31, 2050 date would be the end of the authorization period for all non-FTA exports, inclusive of any “make-up” export periods.⁸⁰ DOE will continue to monitor developments in the LNG export market, however, including EIA’s projections about natural gas supply and demand. Consistent with its longstanding practice, DOE anticipates that it will commission new economic studies and consider any extensions in the export period beyond the year 2050 at the appropriate time in the future.⁸¹

5. Potential Impact on FTA Authorizations and Applications

This Proposal does not apply to FTA applications and authorizations, since DOE is required to grant FTA applications “without modification or delay” under NGA section 3(c). Because of this statutory standard, applicants for FTA orders are not subject to DOE’s standard 20-year term for non-FTA authorizations, and numerous FTA orders already have export terms of 25 or more years. Nonetheless, authorization holders typically apply for both FTA and non-FTA authorizations, and they prefer to align their FTA and non-FTA exports over the same time period for administrative efficiencies. Therefore, if this Proposal is adopted, DOE anticipates that authorization holders may elect to request a comparable extension in the export term of their existing FTA authorization(s) or any pending FTA applications.

B. Proposed Implementation Process

DOE proposes to implement the Proposed Policy Statement as follows:

- (1) **For existing non-FTA authorizations:** Existing authorization holders would request the change on a voluntary opt-in basis. Specifically, each non-FTA authorization holder

⁸⁰ See *supra* note 34.

⁸¹ DOE previously affirmed its commitment to export authorizations issued under the NGA, including existing and future long-term non-FTA authorizations at issue under this Proposal. See U.S. Dep’t of Energy, Policy Statement Regarding Long-Term Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries, 83 FR 28841, 28843 (June 21, 2018) (stating that authorization holders and interested stakeholders “should have the utmost confidence in the validity of DOE/FE’s LNG export authorizations for the full term of each non-FTA order”).

would file an application requesting an amendment to its authorization to extend its export term through December 31, 2050, with an attendant increase in the total export volume over the life of the authorization;

(2) **For pending non-FTA applications:** Existing applicants would request the change as an amendment to their pending application, on a voluntary opt-in basis.⁸² Each applicant would file an amendment to its application to extend its requested export term through December 31, 2050, with an attendant increase in the total export volume over the life of the authorization; and

(3) **For future applications:** The extended term would become DOE's standard export term for all future non-FTA authorizations. Accordingly, for any application filed after the date the Proposed Policy Statement is finalized (if it is adopted), the applicant would request an export term lasting through December 31, 2050, unless the applicant prefers a shorter export term.

In each individual docket proceeding, the authorization holder or applicant would be required to submit an application (for #1 and #3) or an amendment to its pending application (for #2) with relevant facts and argument supporting the term request.⁸³ DOE would provide notice of the application or amendment in the *Federal Register*.⁸⁴ Additionally, if this Proposed Policy Statement is adopted, DOE anticipates that it would provide suggested application templates on its website (including an option for consolidated non-FTA and FTA application proceedings, *see supra* at Section II.A.5) to ensure more consistent, streamlined proceedings.

⁸² See 10 CFR 590.204.

⁸³ See 10 CFR 590.201, 590.202, 590.204.

⁸⁴ See 10 CFR 590.205.

Following the notice and comment period in each proceeding, DOE would conduct a public interest analysis of the application (or amended application) under NGA section 3(a). DOE would also have to comply with NEPA, as discussed herein. For existing non-FTA orders, the public interest analysis would be limited to the application for an extended export term—meaning an intervenor or protestor could challenge the requested extension but not the existing non-FTA order. Consistent with its established practice, DOE would respond to any comments received in its final order on each application (or amendment) requesting the extended export term.

DOE notes that, in Cheniere’s comments on the 2018 LNG Export Study requesting that DOE implement a 30-year export term, Cheniere urged DOE to consider a “consolidated proceeding” for all existing authorizations. Under this approach, Cheniere stated that DOE should “consider the [export term] extension of all existing authorizations in a single proceeding ... because the public interest question in each case is identical.”⁸⁵ Cheniere also asserted that DOE’s decision to extend all existing export terms in a consolidated proceeding would be eligible for a categorical exclusion from NEPA⁸⁶—specifically, categorical exclusion B5.7 (10 CFR part 1021, subpart D, appendix B5).⁸⁷

As indicated, DOE is currently proposing a voluntary application process for existing authorization holders that would be adjudicated in each individual proceeding (#1). DOE believes that not every authorization holder may want to have an extended export term, and that the public interest considerations in individual proceedings may vary. Additionally, DOE takes

⁸⁵ Cheniere Comments at 6.

⁸⁶ *Id.* at 6-7.

⁸⁷ See 10 CFR 1021.410, appendix B to subpart D of part 1021, Categorical Exclusion B5.7 (“Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.”).

no position on Cheniere's suggestion that any decision by DOE to extend an existing export term would be eligible for a categorical exclusion from NEPA (such as categorical exclusion B5.7). If this Proposed Policy Statement is adopted, DOE would comply with its NEPA obligations in each individual application proceeding, consistent with its current practice.⁸⁸

III. Invitation to Comment

In response to this document, any person may file comments addressing the Proposed Policy Statement. The comments will help to inform DOE's decision as to whether to adopt the Proposed Policy Statement for use in current and future non-FTA proceedings. DOE invites comment on any aspect of the Proposed Policy Statement, including but not limited to the potential benefits and impacts associated with the Proposal and the voluntary opt-in process for existing authorization holders and applicants. Interested parties will be provided 30 days from the date of publication of this Notice of proposed policy statement in which to submit their comments.

IV. Public Comment Procedures

DOE is not establishing a new proceeding or docket in this document. Comments submitted in compliance with the instructions in this document will be placed in the administrative record for all of the above-referenced proceedings and need only be submitted once.

Additionally, the submission of comments in response to this Notice of proposed policy statement will not make commenters parties to any of the affected dockets. Persons with an interest in the outcome of one or more of the affected dockets already have been given an opportunity to intervene in or protest those matters by complying with the procedures established in the notice of application issued in each respective docket and published in the *Federal*

⁸⁸ See *supra* at § I.A.

Register. Future opportunities for intervention or protest will be published in the *Federal Register* only for the applications to extend the term.

Comments may be submitted using one of the following methods:

- (1) Submitting the comments using the online form at
<https://fossil.energy.gov/app/docketindex/docket/index/22>
- (2) Mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or
- (3) Hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**.

For administrative efficiency, DOE prefers comments to be filed electronically using the online form (method 1). All comments must include a reference to “Term Extension - Proposed Policy Statement” in the title line. The record in the above-referenced proceedings will include all comments received in response to this Notice of proposed policy statement. DOE will review the comments received on a consolidated basis.

The Proposed Policy Statement is available for inspection and copying in the Division of Natural Gas Regulation docket room, Room 3E-042, 1000 Independence Avenue, SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Additionally, the Proposed Policy Statement and any comments filed in response to this document will be available on the following DOE website:

<https://fossil.energy.gov/app/docketindex/docket/index/22>

V. Administrative Benefits

In this Proposed Policy Statement, DOE is not proposing any new requirements for applicants or authorization holders under 10 CFR part 590. Rather, DOE’s intent is to minimize

administrative burdens and to enhance certainty for authorization holders in the U.S. natural gas export market, as well as for those who may purchase U.S. LNG.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this Proposed Policy Statement.

Signed in Washington, D.C., on January 31, 2020.

Steven Eric Winberg
Assistant Secretary
Office of Fossil Energy

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